

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**JOHN D.**

**Claimant,**

vs.

**EAST LOS ANGELES COUNTY  
REGIONAL CENTER,**

**Service Agency.**

**Case No. DDS-84-ELARC**

**OAH No. 2005080957**

**DECISION**

This matter came on regularly for hearing on April 7, 2006, in Alhambra, California before Sandra L. Hitt, Administrative Law Judge, Office of Administrative Hearings, State of California.

East Los Angeles County Regional Center (ELARC) was represented by Laurie Schaffer.

John D.<sup>1</sup> was represented by his mother and by his authorized representative, Victoria Baca, of the Foundation for Mexican American Services, Inc.

Evidence was received, the matter was argued, and the record was closed and submitted for decision.

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<sup>1</sup> In this Decision, Claimant's surname and that of his mother, are replaced with the initial "D" in order to protect their privacy.

## **ISSUES**

1. Is ELARC required to provide three half-hour sessions of occupational therapy per week to Claimant during school breaks?

2. Is ELARC required to provide one hour per month of physical therapy for Claimant during school breaks?

## **FACTUAL FINDINGS**

1. John D. (hereinafter Claimant or John) is a ten year old boy with mental retardation and spastic cerebral palsy; he has seizures and uses a wheelchair. John is eligible for services, and is a client of ELARC.

2. John attends school in the Los Angeles Unified School District (LAUSD). He is in special education classes and has one-on-one assistance. John is also receiving speech and language therapy and 55 hours per month of respite care. He receives diapers through the MediCal program. During the school year, John receives one half-hour session of occupational therapy (OT) per week from LAUSD, and two half-hour sessions of OT per week from California Children's Services (CCS). John also receives one hour of physical therapy (PT) per month from LAUSD during the school year. The goal of the PT is maintenance of John's ability to tolerate a stander<sup>2</sup> and to enable John to ambulate 50 feet with moderate assistance (i.e.: someone holding John or lifting him by holding onto his clothing). The goal of the OT at school is to assist John with his fine motor skills to enable him to use a pen. The goal of the OT at CCS is to assist John with his fine motor skills to enable him to use a spoon. The fine motor skills being developed through the school are substantially similar to the fine motor skills being developed through CCS.

John has been receiving extended school year benefits under California Code of Regulations, title 5, (Education) section 3043. He has been receiving 20 additional instructional days. This extends his school year for approximately one month in the summer.

3. Claimant has not been receiving OT from CCS during school breaks. CCS is a year-round service provider and does not close for school breaks. Claimant did not present any evidence that he tried to avail himself of CCS services during school breaks, but was refused.

4. ELARC's expert witness, Ms. Angie Espinoza, a Registered Occupational Therapist, licensed by the state of California, opined that John would not experience physical

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<sup>2</sup> A stander is a piece of equipment that helps John to stand for extended periods of time.

regression if one hour of PT per month were not provided during school breaks of less than three months' duration. She opined that the pony walker<sup>3</sup> that ELARC provided for John to use in his home would be an adequate temporary substitute for a person lifting John by his body or clothing to assist him to ambulate. Ms. Espinoza also opined that the fine motor skills being developed by the OT John received at school were the same skills being developed by the OT John received through CCS, and that he would not experience physical regression if he did not receive the extra half-hour of OT during school breaks. Claimant did not present any evidence to the contrary; rather, Claimant argued that physical regression was not the proper standard to be used in order to determine whether ELARC would provide OT/PT services during school breaks. Nothing in the Service Provision Agreements that Claimant submitted into evidence shows that ELARC agreed to provide OT services during school breaks, although the Service Provision Agreements dated July 3, 2002 and July 23, 2003 indicate that ELARC was considering the issue at that time.

5. ELARC has established guidelines regarding the purchase of OT/PT services for school-age children who may require supplemental therapy. These guidelines provide that OT/PT services may be provided for school age consumers when it has been determined that supplemental therapy is required to prevent physical regression. Citing California Welfare and Institutions Code<sup>4</sup> section 4648, subdivision (8), the guidelines, provide that purchase of such services may not be considered until all other alternative sources of funding have been exhausted.

6. John's Individualized Education Plan (IEP) ends in May of 2006. Ms. Espinoza does not know what John's OT and PT needs may be in the coming school year, as she was not privy to the PT evaluation from CCS. Claimant requested that Ms. Espinoza not be allowed to speak with John's therapists due to the pendency of this Fair Hearing. She has not been allowed to speak with any of John's therapists during recent weeks to evaluate his current status. At the hearing, Claimant agreed that Ms. Espinoza could contact John's therapists once the record was closed (April 7, 2006). For its part, ELARC agreed to contact CCS to try to facilitate the provision of CCS-provided OT services to Claimant during the upcoming school summer break.

### **LEGAL CONCLUSIONS**

1. Under the Lanterman Act (§ 4500 et seq. of the Code), the State of California accepts responsibility for persons with developmental disabilities (§ 4501) and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible (§ 4502, subd. (a)). The State agency charged with implementing the Lanterman Act is the Department of Developmental Services (DDS). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4620.) Each regional center may have its own

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<sup>3</sup> A pony walker is a walker with a type of sling in it that can support John and help him to stand and to ambulate.

<sup>4</sup> All references to the Code herein are to the California Welfare and Institutions Code unless otherwise noted.

policies, which are used as guidelines for purchasing services and supports. The policies may set limits on the amount or frequency of service.

2. Cause exists to deny claimant's appeal and to affirm ELARC's determination to end funding for PT and OT services to be provided to Claimant during school breaks. It is unlikely that John will experience regression if ELARC does not fund these services. Under ELARC guidelines, ELARC may purchase OT/PT services under special circumstances for school-age children who may require supplemental therapy. However, citing § 4648, subdivision (8), the guidelines provide that purchase of such services may not be considered until all other alternative sources of funding have been exhausted (Finding 5). These guidelines also provide that OT/PT services may be provided for school age consumers when it has been determined that supplemental therapy is required to prevent physical regression (Finding 5). The uncontradicted evidence is that John will not experience physical regression if he is deprived of one hour of PT per month, and an extra half-hour of OT per week, during school breaks (Findings 2 and 4). Should John experience physical regression during the 2006 summer school break, ELARC can consider this in determining whether to fund OT/PT during future school breaks, and/or Claimant may demand a new Individual Program Plan (IPP) that provides supplemental services.

3. Cause exists to deny claimant's appeal and to affirm ELARC's determination to deny funding for PT and OT services to be provided to Claimant during school breaks. These services are available through another source. Although regional centers are mandated to provide a wide range of services to facilitate implementation of an Individual Program Plan, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) They are specifically directed not to fund duplicate services that are available through another publicly-funded agency. (§ 4648, subd. (a)(8).) This directive is often viewed as a mandate not to "supplant generic resources." Where a service is available elsewhere, the regional center is required to "identify and pursue all possible sources of funding." (§ 4659, subd. (a).) The OT services that John needs during the school break are provided by CCS (Findings 2 and 3). ELARC's provision of a pony walker for Claimant substitutes (during school breaks) for the one hour per month of PT services that John receives during the school year.

WHEREFORE, THE FOLLOWING ORDER is hereby made:

**ORDER**

ELARC's determination not to fund OT/PT for Claimant during school breaks is upheld.

**NOTICE**

**This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**

DATED: April 20, 2006

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SANDRA L. HITT  
Administrative Law Judge  
Office of Administrative Hearings